



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 23, 2004

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-2162

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197908.

The Houston Police Department (the "department") received a request for all information concerning a named individual for the past four years. You state that you will release some of the responsive information. You inform us that the city is withholding incident report number 129432203 T in accordance with a previous determination issued by this office. *See* Open Records Letter No. 2003-7457 (2003) (stating that the city may withhold incident report number 129432203 T pursuant to section 552.108(a)(1) of the Government Code); *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Exhibit 2 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, Exhibit 2 is confidential pursuant to section 58.007(c) of the Family Code. You must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code as information made confidential by law.

Next, you claim that Exhibits 5 and 6 are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the Harris County District Attorney's Office has accepted charges relating to Exhibit 5 and that the suspect in this matter is awaiting a court date. You further explain that although one of the suspects in Exhibit 6 was convicted in connection with this matter, the other suspect has absconded. You state that the information on the fugitive suspect and the convicted individual is so intertwined that the investigation could not be segregated. Therefore, based upon this representation, we conclude that the release of Exhibits 5 and 6 would interfere

with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Next, you claim that section 552.108(a)(2) of the Government Code is applicable to Exhibits 3 and 4. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us that the concluded investigations were not presented to the Harris County District Attorney's Office for prosecution. Based on the information you provided, we find that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, section 552.108(a)(2) of the Government Code is applicable to Exhibits 3 and 4.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. Since you indicate that you will release basic information from the non-juvenile incident reports, we conclude that the department may withhold the remaining information in Exhibits 3, 4, 5, and 6 pursuant to section 552.108 of the Government Code.² We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, you must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As you will release the basic information from the non-juvenile incident reports, you may withhold the remaining information in Exhibits 3, 4, 5, and 6 pursuant to section 552.108 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

²As we are able to make a determination under sections 552.101 and 552.108 of the Government Code, we need not address your additional claim under section 552.130.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

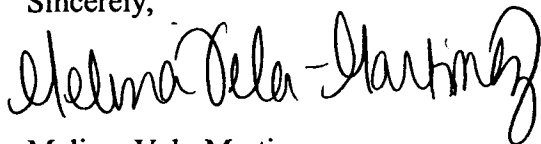
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Vela-Martinez", with a stylized flourish at the end.

Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 197908

Enc. Submitted documents

c: Mr. Cougan Hignight
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Houston, Texas 77079
(w/o enclosures)